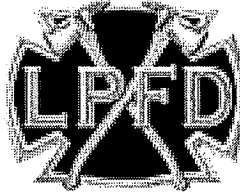


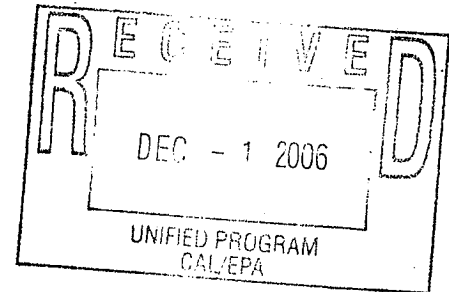
Livermore-Pleasanton



Fire Department

November 3, 2006

Ms. Tina Gonzales
Cal EPA
1001 I Street
Sacramento, CA 95814



Subject: Response to Final Evaluation Report

Dear Ms. Gonzales:

Enclosed is our response to the final Evaluation Report, which includes progress on corrective actions. One document is a summary table of the deficiencies. The other addresses each deficiency in detail.

Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,

Danielle Stefani
Hazardous Materials Coordinator

cc: Eric Carlson, Fire Marshal

encl.: Response to the Final Evaluation Report for Livermore-Pleasanton Fire
Department Certified Unified Program Agency

Summary of Response to Final Evaluation Report for Livermore-Pleasanton Fire
Department Certified Unified Program Agency

copy sent email

Response to Deficiencies

Livermore Pleasanton Fire Department

February 28, 2005

Deficiency 1	
Deficiency	The effective term of the permit element is missing from the Consolidated Permit Program Plan
Response	<p>The Permit and the Permit Plan does specify the effective term for permits: permits are effective until 1) the operation ceases, 2) ownership changes, or 3) the permit is revoked. In addition, the permit states "This permit is valid only for processes/activities conducted in conformance of applicable statutes and code regulations." See the attached copy of our permit format.</p> <p>During the evaluation, we discussed what, if any, constraints the statute and regulations put on the effective term for permits. Section 15190(c)(3)(E) of the regulations merely says that the permit must specify the effective term of the permit, but places no constraints on that term. State staff said they believed permits must be valid only for a defined amount of time and referred to H&SC Section 25285. This section states:</p> <p><i>25285. (a) Except as provided in Section 25285.1, a permit to operate issued by the local agency pursuant to Section 25284 shall be effective for five years. This subdivision does not apply to unified program facility permits.</i></p> <p>To the best of my recollection the exception for Unified Program permits (the second sentence) was added to the UST statute to allow the UST permit to be consolidated with other permits. Many CUPAs have non-UST hazardous materials permits with effective terms other than five years. If term lengths are different, consolidation of permits is difficult. Consolidation of program elements, especially permits and bills, was one of the primary goals of Senate Bill 1082. In our case, our other permits do not have an expiration date.</p> <p>This issue was addressed during our first evaluation and the SWRCB agreed with our interpretation that the second sentence of the statute exempts a CUPA's permits from constraints related to effective term length. We have been unable to find any other provision in statute that would proscribe expiration dates or allow the regulations to require our permits to have expiration dates. During this evaluation the SWRCB representative agreed that the statute did not proscribe an expiration date. The Cal EPA representative said they would look into this issue further.</p>

Response to the Final Evaluation Report for Livermore-Pleasanton Fire Department Certified Unified Program Agency (dated September 20, 2006)

UP Administration Reporting Standards (Draft Deficiency 2)	
Draft Deficiency	The CUPA is not sending in all of their Summary Reports due by September 30 th of each year, this will be a necessary component for the next evaluation process.
CUPA Response (2/28/2005)	The reports for 02/03 were submitted 11/24/2003, about two months late. The reports for 01/02 and for 03/04 were submitted by the due date.
Proposed Correction	The future Summary Reports will be submitted by the due date.
Recommended Timeframe for Correction	Next Summary Report
Citation	Title 27, CCR, Section 15290(c)(1); Title 27, CCR, Section 15290(a)(2); Title 27, CCR, Section 15290(a)(3)
Final Finding	Cal/EPA accepts the CUPA's response to this deficiency as adequate and will be expecting the next Summary Report due to the state by September 30, 2006.
Response	Reports for FY04/05 and 05/06 were submitted on time.
Status	Resolved
Action Plan	N/A

**UP Administration and Underground Storage Tank Program
Inspection Standards
(Draft Deficiency 3)**

Draft Deficiency	The CUPA is not inspecting UST facilities annually. During the past fiscal year the CUPA inspected approximately 37% of the UST facilities in Cities of Livermore and Pleasanton.
CUPA Response (2/28/2005)	We have used two sources to estimate achievable inspection per inspector annual productivity. One is the data available from the Summary Reports submitted by CUPAs in Alameda County (which includes numbers of inspections accomplished) and our knowledge of the number of inspectors per CUPA at those CUPAs. The other is a Cal EPA estimate for this metric statewide. An achievable number appears to be in the range of 70-80 inspections per year per inspector. Our business inventory is currently 698. Some facilities are scheduled for annual inspections, the rest are scheduled for triennial inspections. Our current inspection workload is 316 inspections per year (158 per inspector), which we have not been successful in achieving. At 80 inspections per year per inspector assignment, four inspectors would be required. We have two Hazardous Materials Inspectors and a Hazardous Materials Coordinator (whose inspection workload is approximately on half to one third that of the inspectors). Given the current fiscal climate of state deduction of local revenues, it is highly unlikely that we will receive additional staffing in the foreseeable future.
Proposed Correction	At the beginning our next budget cycle efforts (approximately one year) we will further analyze inspector workload and the fiscal climate.
Recommended Timeframe for Correction	One Year
Citation	H&SC 6.7, Section 25288(a) and H&SC 25508(b)
Final Finding	CUPA's response to this deficiency is not adequate. The CUPA does not state the measures it will take to correct this deficiency. Reevaluating this deficiency at the end of one year does not address how the agency is planning to ultimately resolve the staffing problem to meet the mandated inspection frequency for UST facilities. Therefore, the CUPA needs to submit an action plan within 90 days of this report to the State Water Board to correct this deficiency.
Response	In FY 05/06 we conducted 64 routine UST inspections – 88% of the UST sites, a very significant improvement since FY 03/04. We anticipate we will have no difficulty inspecting 100% of UST sites this year. More sites are in very good compliance, reducing the time needed to inspect and work with them, we now have access to enforcement penalty monies that can be used (if needed) to hire a consultant to conduct some of the inspections, and our staff resources have been increased since a Fire Inspector hired last year is also a certified UST inspector.
Status	Resolved
Action Plan	N/A

Hazardous Materials Release Response Plans and Inventories Program

Inspection Standard

Draft Deficiency 4

Deficiency	Business Plan certification statement. The CUPA isn't receiving and/or filing all the annual statements. The CUPA must follow up to ensure all statements are received.
Response	<p>We are filing all HMBPs and HMBP certification statements that we receive.</p> <p>The HMBP program is addressed at all facilities at which we conduct a CUPA inspection. We have a very high rate of compliance for those violations found during routine inspections.</p> <p>In the past we have done mass mailings requesting the recertification statement (although this is not to our knowledge a program requirement). We did a mailing in 2004. Due to our inability at this time to pursue AEOs without the direct involvement of the City Attorney, follow through with those businesses that do not submit the recertification statements has been problematic. One of our goals this year is to work with City Attorneys to develop a streamlined AEO process for this violation. This should allow us to proceed with enforcement in more cases.</p> <p>We will be doing a 2005 mailing by the end of March, 2005. Our enforcement priority will be those businesses who did not respond to the 2004 notification.</p>
Correction	Work with the City Attorneys to establish an effective enforcement mechanism.
Recommended Timeframe for Correction	One Year
Citation	H&SC 25503.3(c)(2) and 25501(f) and CCR Title 19 2729.4 and 2729.5
Final Finding	This is acceptable. With a one year time frame for compliance
Response	92% of our HMBP sites have current HMBPs (via updates or re-certifications) on file. We are in the process of conducting enforcement inspections and issuing Unilateral Orders at this time with the remaining 8%.
Status	Open, but very near full implementation of correction.
Action Plan	Complete enforcement process for the 48 sites without current HMBPs. We are going into be taking enforcement action for groups of about 8-10 sites at a time beginning in two weeks. Letters will be sent in January, 2007 reminding facilities owners of the need to resubmit or recertify their HMBPs for 2007.

Hazardous Materials Release Response Plans and Inventories Program

Inspection Standard

(Draft Deficiency 5)

Deficiency	The CUPA is not inspecting all regulated businesses in their jurisdiction at least once every 3 years. The "Annual Single Fee Summary Reports" for 2001 – 2002; 2002-2003; 2003-2004 documents that the CUPA has inspected approximately 75% of the regulated businesses in their jurisdiction during the three year period.
Response	<p>NOTE: The Final Evaluation Report states that we did not respond to this deficiency. We did, in fact respond. We provided a consolidated response to Draft Deficiencies 3 and 5. That response stated:</p> <p>We have used two sources to estimate achievable inspection per inspector annual productivity. One is the data available from the Summary Reports submitted by CUPAs in Alameda County (which includes numbers of inspections accomplished) and our knowledge of the number of inspectors per CUPA at those CUPAs. The other is a Cal EPA estimate for this metric statewide. An achievable number appears to be in the range of 70-80 inspections per year per inspector. Our business inventory is currently 698. Some facilities are scheduled for annual inspections, the rest are scheduled for triennial inspections. Our current inspection workload is 316 inspections per year (158 per inspector), which we have not been successful in achieving. At 80 inspections per year per inspector assignment, four inspectors would be required. We have two Hazardous Materials Inspectors and a Hazardous Materials Coordinator (whose inspection workload is approximately on half to one third that of the inspectors). Given the current fiscal climate of state deduction of local revenues, it is highly unlikely that we will receive additional staffing in the foreseeable future.</p>
Correction	At the beginning our next budget cycle efforts (approximately one year) we will further analyze inspector workload and the fiscal climate.
Recommended Timeframe for Correction	One Year
Citation	H&SC 6.7, Section 25288(a) and H&SC 25508(b)
Final Finding	The CUPA must respond to the fact that they are not inspecting all business at least once every three years.
Response	<p>We did respond, as a consolidated response to draft deficiencies 3 and 5. We assume the state's final finding for Draft Deficiency 3 applies to this deficiency as well, in which case it would state:</p> <p>CUPA's response to this deficiency is not adequate. The CUPA does not state the measures it will take to correct this deficiency. Reevaluating this deficiency at the end of one year does not address how the agency is planning to ultimately resolve the staffing problem to meet the mandated inspection frequency for UST facilities. Therefore, the CUPA needs to submit an action plan within 90 days of</p>

	this report to the Office of Emergency Services [rather than the State Water Board as for Draft Deficiency 3] to correct this deficiency.
Status	Open
Action Plan	We will submit an action plan addressing staff resources within 90 days (December 20 th , 2006)

Hazardous Waste Generator/Tiered Permitting Program Permitting Standards (Draft Deficiency 6)	
Deficiency	The CUPA is not conducting inspections or taking enforcement in a manner consistent with state law. To wit: the CUPA is not ensuring that business are updating or submitting annual Permit by Rule notifications (Seaway Semiconductor – latest notification observed in file 1999), and is not taking any enforcement at those businesses that fail to submit such information.
Response	<p>The first sentence of this deficiency is very broad. We are conducting inspections that are consistent with state law. The substance of the deficiency appears to be a failure to take enforcement action in some cases, in particular in the case of Seaway. In fact, we attempted to refer this case to the DA a couple of years ago, but it was turned down. It is now in line for an Administrative Enforcement Order via the City Attorney. We do have a number of other cases (including non-Tiered Permit cases) in our enforcement file, awaiting action by the City Attorneys.</p> <p>As a CUPA we are constrained in our ability to take formal enforcement by the District Attorney's and City Attorneys' willingness to take cases and the City Attorneys constraints on the AEO process.</p>
Correction	<p>We plan to use the HMPB recertifications as a pilot for the CUPA doing AEOs without direct involvement of the City Attorneys in each case.</p> <p>We are also working with the City Attorney in Livermore to do a significant AEO and have a case about to start in Pleasanton. We anticipate that once the City Attorneys have gone through the AEO process, their experience and increased comfort level will allow us to proceed more effectively with AEO cases.</p> <p>We have developed an enforcement case tracking and report system to raise the visibility of these cases with the City Attorneys, the District Attorney, and our management. A current copy is attached.</p>
Recommended Timeframe for Correction	One Year
Citation	H&SC 25503.3(c)(2) and 25501(f) and CCR Title 19 2729.4 and 2729.5
Final Finding	The CUPAs response is not adequate. This deficiency will be addressed through a Program Improvement Agreement.
Response	This deficiency is more understandable now that it has been placed under the heading of Permitting Standards (tiered permit sites, of which we have five) rather than the general category of Hazardous Waste generator
Status	Open, very close to being resolved. We have added a tiered permit notification tracking system to our main data base. We have worked

	successfully with the City Attorneys' offices to establish an active AEO system. Now that the first phase of implementation is essentially complete, we will be able to more effectively pursue enforcement. In fact, the next two cases in line for AEOs are tiered permit sites.
Action Plan	Initiate enforcement action by the end of the quarter (12/31/2006) for the two tiered permit facilities that are in violation with tiered permit paperwork - and other requirements.

Hazardous Waste Generator/Tiered Permitting Program**Inspection Standards**

(Draft Deficiency 7)

Deficiency	The CUPA has not amended its inspection and Enforcement Plan to include a discussion of how the CUPA will expend 5% of its hazardous waste resources to the oversight of Universal Waste handlers and silver-only generators.
Response	We are accomplishing the 5% workload allocation. As observed during the evaluation, every hazardous waste site inspection now includes a universal waste inspection. In addition, our 2004 and 2005 strategic plans include a universal waste element for the ongoing development and enhancement of this portion of our program.
Correction	The Inspection and Enforcement Plan has been amended to mention the 5% workload allocation. See attached copy.
Recommended Timeframe for Correction	60 days
Citation	Title 27 CCR, Section, 15200 and H&SC 25201.4(c) and CUPA Forum Board Position
Final Finding	The CUPAs response is adequate to correct the deficiency
Response	--
Status	Resolved.
Action Plan	N/A

Hazardous Waste Generator/Tiered Permitting Program

Inspection Standards

(Draft Deficiency 8)

Deficiency

The CUPA is not citing violations in a manner consistent with the definitions of minor, Class II, or Class I as provide in law and regulation. During the oversight inspection a potential Class 1 violation (mixing hazardous waste solvent with used oil) was not noted in the inspection report. Review of inspection records showed potential Class I violations (treatment without a hazardous waste permit and no financial assurance for closure).

Response

During the inspection, the inspector told the facility contact that the solvent should not be mixed with the used oil. This requirement will be noted in writing, as it should have been during the inspection.

25110.8.5. "Class I violation" means any of the following:

(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is any of the following:

(1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:

(A) The volume of the waste.

(B) The relative hazardousness of the waste.

(C) The proximity of the population at risk.

(2) The deviation is significant enough that it could result in a failure to accomplish any of the following:

(A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.

(B) Prevent releases of hazardous waste or constituents to the environment during the active or postclosure period of facility operation.

(C) Ensure early detection of releases of hazardous waste or constituents.

(D) Ensure adequate financial resources in the case of releases of hazardous waste or constituents.

(E) Ensure adequate financial resources to pay for facility closure.

(F) Perform emergency cleanup operations of, or other corrective actions for, releases.

The mixing of small amounts of organic solvent with used oil does not, in our opinion, constitute a Class I violation. The used oil is disposed of through a recycling process (Evergreen) that is capable of properly managing organic solvents mixed with used oil. Used oil itself, of course, contains many similar organic components. In addition, solvents are a common contaminant. Evergreen load checks for chlorinated solvents which cannot be properly handled by their process. The solvent in question at De Paoli is not chlorinated. As a result, this

	<p>violation does not present a significant threat to human health or safety or the environment (part 1 of the definition). With respect to part 2 of the definition, C, D, E, and F are not applicable to this situation. Parts 2.A and B. of the definition state:</p> <p><i>Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility. AND Prevent releases of hazardous waste or constituents to the environment during the active or postclosure period of facility operation.</i></p> <p>While the mixing of the solvent an oil is not the proper disposal method, the solvent was being delivered to an authorized hazardous waste facility whose processes would not be disrupted by the solvent and which would prevent the solvent from being disposed of to the environment.</p>
Correction	<p>Document in writing to the facility the need to segregate and dispose of used oil and used solvent separately.</p> <p>We have used this comment as an opportunity to review the definitions of Class I, Class II and minor violations.</p>
Recommended Timeframe for Correction	30 days
Citation	Title 27, CCR, Section 15200(f)(2)(C) and H&SC, Section 25187(g)(1)
Final Finding	The CUPAs Response is adequate to correct the deficiency. [See Cal EPA report for DTSC's technical comment regarding our response].
Response	--
Status	Resolved.
Action Plan	N/A

Hazardous Waste Generator/Tiered Permitting Program

Inspection Standards

(Draft Deficiency 9)

Deficiency	<p>The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification. Either the business must submit a Return to Compliance Certification in order to document its compliance or in the absence of the certification must re-inspect the business to confirm that compliance has been achieved.</p>
Response	<p>Businesses which receive a notice to comply must correct the violations in 30 days and notify the CUPA of the correction within 30 days. Our Hazardous Waste inspection form contains a space for self certification of correction for minor violations, and the back of the form explains the requirements for correction and certification for minor violations.</p> <p>Not all businesses submit the self certification within 35 days of the inspection. We do currently follow up, either through letters or reinspections, with every business we inspect. If they do not submit the certification within 35 days, it is a new violation, and they have lost their protection from formal enforcement for the original minor violations. Ultimately, failure to comply will result in formal enforcement to achieve compliance. However, the vast majority of our sites do return to compliance, especially with respect to minor violations.</p> <p>We are unfamiliar with any statute or regulation that would require us to conduct a re-inspection, rather than follow up via letters, in these situations. We are also not aware of any statute or regulation that requires that we take formal enforcement action in each case in which a minor violation has not been corrected within 30 days. The sections cited in the evaluation state:</p> <p><i><u>Title 27, CCR, Section 15200(f)(2)(C): [The inspection and enforcement program shall provide] Penalties and enforcement actions which are consistent and predictable for similar violations and no less stringent than state statute and regulations.</u></i></p> <p><i><u>H&SC, Section 25187(g) (1): Notwithstanding any other provision of this section, if a facility fails to comply with a notice to comply within the prescribed period, or if the department, or an authorized local officer or agency, determines that the circumstances surrounding a particular minor violation or combination of minor violations are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the department or authorized local officer or agency may take any needed enforcement action authorized by this chapter</u></i></p>
Correction	<p>Since we do follow up on those cases where a self certification is not received, and since (please correct me if I am in error) we are not</p>

	required to take formal enforcement action in these cases (other than those that escalate into Class I violations), we are not sure why this issue is listed as a deficiency. If you can please clarify the applicable requirement, we will amend our procedures as appropriate.
Recommended Timeframe for Correction	30 days
Citation	Title 27, CCR, Section 15200(f)(2)(C) and H&SC, Section 25187.8(g)(1)
Final Finding	The CUPAs Response is adequate to correct the deficiency. [See Cal EPA report for DTSC's technical comment regarding our response].
Response	--
Status	Resolved
Action Plan	N/A

Hazardous Waste Generator/Tiered Permitting Program**Inspection Standards**

(Draft Deficiency 10)

Deficiency	The CUPA failed to take enforcement in a manner consistent with the law in that the CUPA failed to take the appropriate enforcement for the following violations noted during the file review: InPhenix was treating hazardous waste without a permit and no Return to Compliance observed within the required timeframe.
Response	This implies that the violations are not Class I violations since the trigger for formal enforcement is the failure to submit an RTC within the required timeframe. In fact, the violations were identified as Class II and minor violations during the inspection. However, we are only obligated to take formal enforcement for Class 1 violations. In addition, InPhenix was inspected 10/21/2004. The evaluation was conducted 1/11/2005, and InPhenix was in contact with us and actively pursuing compliance.
Correction	We are not sure what our failure was in this case. If you can please clarify the applicable requirement, we will amend our procedures as appropriate.
Recommended Timeframe for Correction	30 days
Citation	Title 27, CCR, Section 15200(f)(2)(C), H&SC, Sections 25110.85 and 25117.6 and Title 22, Section 66260.10
Final Finding	The CUPA's response is not adequate. This violation should be classified as a Class I violation, since treatment without a permit allows a facility to operate without meeting standards that ensure that the waste is adequately disposed of to an authorized facility, and formal enforcement should have been initiated. This deficiency will be addressed through a Program Improvement Agreement
Response	<p>The Final Finding is different than the draft finding, so it is not surprising our response to the draft finding does not satisfy the final finding. The draft finding did not say enforcement was needed because the violation should be considered Class I. Rather, it said no RTC had been observed within the required timeframe.</p> <p>We concur that formal enforcement is appropriate and required for Class I violations.</p> <p>We were unaware that the state considers that in all instances of failure to have completed required paperwork for on-site treatment that the violation is a Class I violation, even when the treatment is in fact resulting in proper management and disposal of hazardous wastes. It was, in fact our understanding based on training provided by DTSC that violations involving only paperwork issues should not be considered Class I violations.</p> <p>In this case, the treatment system was a new, existing treatment system</p>

	<p>installed by a prior occupant. The system was provided with appropriate secondary containment, release monitoring, system controls, etc. and the facility had notified the Fire Department in general about its existence and operations.</p> <p>We do refer Class I violations for formal enforcement. In the future, if we encounter hazardous waste treatment at a generator site without the appropriate permit, we will consult with DTSC to evaluate the appropriate violation classification should we feel that there is any reason not to classify the violation as Class I.</p> <p>We have also incorporated the Violation Classification Guidelines into our program.</p> <p>Now that we have established an active AEO process with our City Attorneys' offices, this facilities non-compliance will be addressed shortly.</p>
Status	Open, with full resolution proposed base on modified deficiency.
Action Plan	Initiate enforcement action by the end of the quarter (12/31/2006).

Hazardous Waste Generator/Tiered Permitting Program**Inspection Standards**

(Draft Deficiency 11)

Deficiency	The CUPA is not taking timely formal enforcement by not initiating enforcement within 135 days of completion of the inspection. During the evaluation, formal enforcement on Seaway Semiconductor and Cal Mac was not actively being initiated.
Response	<p>The issue of Seaway is addressed in Deficiency 6. Cal Mac had been initiated at the time of the evaluation – it is an active case with the District Attorney. The cases were referred to the DA within a few weeks of the referral to us. I am not sure how this differs from Deficiency 6. Deficiency 6 uses a single violation from Seaway (PBR notification) as an example, while this one uses Seaway as a whole.</p> <p>The citation provided in the draft evaluation is in error – the section has nothing to do with the issue at hand. I spoke to Tom Asoo, who concurred that the citation was not applicable. He said that the appropriate reference is probable Title 27 CCR 15200(f)(2)(C), which says that a CUPAs enforcement component must be no less stringent than state statute and regulations. He said the 135 day limit comes from state policy and procedures.</p> <p>See our response to Deficiency 6 for further discussion regarding enforcement.</p>
Correction	See our response to Deficiency 6 for further discussion regarding enforcement.
Recommended Timeframe for Correction	60 days
Citation	H&SC Section 25401.4(c) and EO-02-003-PP and DTSC-CUPA AEO Workplan
Final Finding	The CUPA's response is not adequate. This deficiency will be addressed through a Program Improvement Agreement.
Response	This deficiency is ultimately rooted in the need for additional staff resources. The more inspections we start, the closer we get to state mandated inspection frequencies. However, at some point, we start too many inspections to effectively follow up. We continue to work on balancing this aspect of the program. In addition we continue to look for ways to improve the efficiency of our inspection and follow up processes. Enforcement is an important aspect of this issue, since formal enforcement itself takes time, but can in the long run improve timely compliance rates.
Status	Open
Action Plan	<ol style="list-style-type: none">1. We will submit an action plan addressing staff resources within 90 days (December 20th, 2006)2. We will include return to compliance statistics in the quarterly reports to the state to document the effectiveness of our efforts to focus on inspection follow up.

Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Not included in Draft Summary of Findings)	
Deficiency	N/A
Response	N/A
Correction	N/A
Recommended Timeframe for Correction	N/A
Citation	Title 27, CCR, Section 15200(b)(1) and 15200(f)(1)(C) states that the CUPA shall conduct inspections of all hazardous waste generators according to applicable statutes and regulations and follow the provisions for administering the program elements outlined in the CUPAs Inspection and Enforcement Plan.
Final Finding	The CUPA is not meeting their stated inspection frequency of conducting all hazardous waste generator inspections at least once every three years. Review of the CUPAs annual summary reports indicates the CUPA is inspecting approximately 75% of the regulated businesses in their jurisdiction during the past three fiscal years.
Response	<p>There is no statutorily mandated minimum inspection frequency for hazardous waste generators. Over the last four fiscal years, our inspection frequency for hazardous waste generators averaged 3.5 years. We have updated our Inspection and Enforcement Plan to set a four year minimum inspection frequency for hazardous waste generators.</p> <p>Attached is a copy of the current Inspection and Enforcement Plan.</p>
Status	Resolved.
Action Plan	N/A.

UP Administration**Single Fee System/Fee Accountability Standards**

(Not included in Draft Summary of Findings)

Draft Deficiency	N/A.
CUPA Response (2/28/2005)	N/A
Proposed Correction	N/A
Recommended Timeframe for Correction	N/A
Citation	N/A
Final Finding	<p>The CUPA's Unified Program single fee amounts do not adequately cover the costs of mandated Unified Program activities. State law requires the governing body of the CUPA to establish a single fee that will cover the CUPA's cost for their implementation of the unified Program in the Cities of Livermore and Pleasanton, which are assessed on all businesses regulated under the Unified Program, at a level in their response to the Summary of Findings, the CUPA has indicated that "until the state stops removing revenue from the counties and cities and replaces the revenue, it will not be possible for us to increase our staffing levels."</p>
Response	<p>25404.5(a) (2) (A) states</p> <p>"The governing body of the local certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3."</p> <p>We have always understood this language to authorize the governing body to charge fees but to limit the amount of those fees to the necessary and reasonable costs of the program. We have never heard it stated that this provision mandates 100% cost recovery through fees. In fact, since certification, Pleasanton has never charged fees for routine activities, and pays for that portion of the program out of the General Fund. In the nine years we have been sending annual fee reports to the state, the state has never taken issue with the fact that Pleasanton does not charge fees for the Unified Program. Even Livermore, which does charge fees to cover business specific activities uses the General Fund for some aspects of the program, such as residential complaints and assistance with hazardous materials spills.</p> <p>We fully acknowledge that the governing board of a CUPA must</p>

	<p>adequately fund an effective program. The point we are addressing here, and request clarification regarding, is the mechanisms allowed or prohibited to provide that funding.</p> <p>Is the state taking the position that even if a program is fully funded (i.e. meeting state mandate inspection frequencies and otherwise is an effective program) through General Fund monies or a combination of General Fund monies and fees, that CUPA is mandated to charge fees to recover 100% of the program cost and not use any General Fund monies to fund the program?</p> <p>Would achieving program mandates resolve this deficiency, even if some of the program costs were funded by the General Fund? Or, even if program mandates were being achieved, would Pleasanton be forced to pay for the all of the Unified program through fees on businesses, rather than to any extent through the general fund?</p>
Status	Need clarification regarding the deficiency.
Action Plan	Awaiting state response to questions posed above.

Summary of Response to Final Evaluation Report for Livermore-Pleasanton Fire Department Certified Unified Program Agency
(Report dated 9/20/2006)

Deficiency	Issue	Comments	Action Plan
UP Administration Reporting Standards (Draft Deficiency 2)	Summary Reports late.	Reports for 03/04, 04/05, and 05/06 were submitted on time	N/A - Resolved
UP Administration and Underground Storage Tank Program Inspection Standards (Draft Deficiency 3)	The CUPA is not inspecting UST facilities annually.	Inspection frequency was raised from 37% during the evaluation to 88% in 05/06 and will be 100% for 06/07	N/A - Resolved
Hazardous Materials Release Response Plans and Inventories Program Inspection Standard Draft Deficiency 4	The CUPA isn't receiving and/or filing all the annual statements.	92% of facilities now have current paperwork on file.	Complete enforcement process for the 48 sites without current HMBPs. We are going into be taking enforcement action for groups of about 8-10 sites at a time beginning in two weeks. Letters will be sent in January, 2007 reminding facilities owners of the need to resubmit or recertify their HMBPs for 2007.
Hazardous Materials Release Response Plans and Inventories Program Inspection Standard (Draft Deficiency 5)	The CUPA is not inspecting all HMBP sites at least every three years.	Staff resource issue.	We will submit an action plan addressing staff resources within 90 days (December 20 th , 2006).
Hazardous Waste Generator/Tiered Permitting Program Permitting Standards (Draft Deficiency 6)	The CUPA is not taking enforcement action for a site that does not have current tiered permit paperwork	We have added a tiered permit notification tracking system to our main data base. We have worked successfully with the City Attorneys' offices to establish an active AEO system. Now that the first phase of implementation is essentially complete, we will be able to more effectively pursue enforcement. In fact, the next two cases in line for AEOs are tiered permit sites.	Initiate enforcement action by the end of the quarter (12/31/2006) for the two tiered permit facilities that are in violation with tiered permit paperwork – as well as other requirements.
Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Draft Deficiency 7)	Inspection and enforcement plan did not address 5% minimum hazardous waste staff resources spent on universal waste and silver only generators	Added to Inspection and Enforcement Plan	N/A – Resolved
Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Draft Deficiency 8)	Did not cite specified hazardous waste violation as a class I.	State found the CUPA's response adequate to correct the deficiency.	N/A – Resolved

Summary of Response to Final Evaluation Report for Livermore-Pleasanton Fire Department Certified Unified Program Agency
(Report dated 9/20/2006)

Deficiency	Issue	Comments	Action Plan
Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Draft Deficiency 9)	The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification.	State found the CUPA's response adequate to correct the deficiency.	N/A – Resolved
Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Draft Deficiency 10)	The CUPA failed to take enforcement in a manner consistent with the law in that the CUPA failed to take the appropriate enforcement for the following violations noted during the file review: InPhenix was treating hazardous waste without a permit and no Return to Compliance observed within the required timeframe.	The Final Finding is different than the draft finding. See full response for details of our response to the reworded deficiency.	Initiate enforcement action by the end of the quarter (12/31/2006).
Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Draft Deficiency 11)	The CUPA is not taking timely formal enforcement by not initiating enforcement within 135 days of completion of the inspection.		<ol style="list-style-type: none"> 1. We will submit an action plan addressing staff resources within 90 days (December 20th, 2006) 2. We will include return to compliance statistics in the quarterly reports to the state to document the effectiveness of our efforts to focus on inspection follow up.
Hazardous Waste Generator/Tiered Permitting Program Inspection Standards (Not included in Draft Summary of Findings)	The CUPA is not inspecting every hazardous waste generator at least every 3 years.	There is no statutorily mandated minimum inspection frequency for hazardous waste generators. Over the last four fiscal years, our inspection frequency for hazardous waste generators averaged 3.5 years. We have updated our Inspection and Enforcement Plan to set a four year minimum inspection frequency for hazardous waste generators.	N/A – Resolved
UP Administration Single Fee System/Fee Accountability Standards (Not included in Draft Summary of Findings)	The CUPA is not charging 100% cost recovery through fees	We need clarification regarding this deficiency.	Awaiting state response to our questions regarding this deficiency.